GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

UNSTARRED QUESTION NO:4439
ANSWERED ON:08.05.2007
APPLICATION AGAINST PATENT
Acharia Shri Basudeb;Kurup Adv. Suresh

Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether the Multi National Companies (MNCs) including Novartis have filed patent applications against some important life saving drugs including the modified version;

(b) if so, the details thereof;

(c) the steps taken by the Government to check and award of such patent life saving drugs to the MNCs;

(d) whether any company has challenged the Indian Patent Act in any Court in the country or abroad;

(e) if so, the details thereof; and

(f) the steps taken by the Government to defend the Indian Patent Act?

Answer

MINISTER OF THE STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY (SHRI ASHWANI KUMAR)

(a) to (c): A number of patent applications related to drugs have been filed with the Indian Patent Office by companies from abroad, including by M/s Novartis, a Swiss company. A list of filing of pharmaceutical patent applications by some leading foreign companies since 1995 is given in the statement at Annexure.

The Patent Office, after receiving a patent application, examines it as per the procedure prescribed under the Patents Act. The Office has qualified examiners to examine patent applications in different fields of technologies including for pharmaceuticals and drugs. To qualify for a patent, an invention must be new, involve an inventive step and capable of industrial application. The Patents Act also contains details of inventions which are not patentable. Non-patentable inventions include: the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant. The Act also provides for pre-grant opposition whereby any person can oppose the grant of a patent on the grounds specified inthe said Act.

(d) to (f): M/s Novartis has challenged the constitutional validity of Section 3 (d) of the Patents Act in the Hon'ble High Court of Madras which is pending in the High Court. The Government has taken appropriate steps to defend the provisions of the Patents Act.

M/s Novartis had also appealed in the Hon'ble High Court of Madras against the rejection of their patent application by the Controller of Patents. However, the Hon'ble High Court has directed the transfer of the appeal to the Intellectual Property Appellate Board (IPAB) at Chennai consequent to the IPAB becoming operational with respect to patents appeals vide Government of India notification dated 2nd April, 2007.

ANNEXURE

STATEMENT REFERRED TO IN REPLY TO PARTS (a) TO (c) OF THE LOK SABHA UNSTARRED QUESTION NO. 4439 FOR ANSWER ON 8th MAY, 2007

Name of the legal entity	Nationality	No. of applications filed
M/s Novartis	Switzerland	108
M/s Novo Nordisk	Denmark	186
BASF AG	Denmark	160
F Hoffman	Switzerland	152
Sandoz	Switzerland	26
Ciba Geigy	Switzerland	14
Hoechst	Germany	142
Merck	USA	138

Astra Zeneca Sweden 122
Bayer Germany 119
Teva Pharmaceuticals Israel 84
Otsuka Chemical Company Japan 16
Pharmexa Denmark 10
Eli Lilly USA 90
Weyth USA 105
Glenmark Switzerland 29
Altana Pharmacuticals Germany 24
Glaxo UK 101
Boehringer Germany 9